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PETITION NOT PRINTED

No. 567

In the Supreme Court of the United States

OCTOBER TERM, 1964

JAMES RAMEY, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals upholding petitioner's conviction (V. 4, pp. 19–26)[1] is reported at 336 F. 2d 512.

JURISDICTION

The judgment of the court of appeals was entered on September 14, 1964 (V. 4, p. 28). The petition for a writ of certiorari was filed on October 7, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a law enforcement officer violates 18 U.S.C. 242 by arresting and incarcerating a person

[1] References are to volume and page of the record.

arbitrarily, without cause, and for an ulterior purpose.

2. Whether the evidence against petitioner was sufficient to warrant submission of the case to the jury.

3. Whether a constable is immune from prosecution under 18 U.S.C. 242.

STATUTES INVOLVED

Section 242 of Title 18 provides:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Section 371 of Title 18 provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.
>
> If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

STATEMENT

On September 18, 1963, an indictment in two counts was filed in the United States District Court for the Southern District of West Virginia (V. 1, pp. 3–7). The first count charged petitioner James Ramey, Jr., with depriving one Homer Fraley of his constitutional right not to be deprived of liberty without due process of law, in violation of 18 U.S.C. 242, in that (V. 1, pp. 3–4):

> * * * while acting under color of law as aforesaid, [he] did arrest and place in custody and cause to be incarcerated the said Homer Fraley on the basis of a false, fictitious, and fraudulent complaint and warrant charging that the said Homer Fraley had raped one "Mary Marcum" or "Mary Marcom" well knowing that the offense charged in the complaint and warrant was false, fictitious, and fraudulent, and well knowing that the said Homer Fraley was innocent of that crime and of any other crime against "Mary Marcum" or "Mary Marcom", or any other person, all for the purpose and with the intent of depriving him of the Constitutional right and privilege aforesaid.

The second count charged a conspiracy to violate 18 U.S.C. 242 between petitioner and his wife Louise, a Justice of the Peace for Wayne County, West Virginia, in connection with the arrest of Homer Fraley, in violation of 18 U.S.C. 371.[2]

[2] This count charged in pertinent part (V. 1, p. 5):

> It was part of the wilful plan and purpose of the said conspiracy that defendant Louise Ramey would, while acting under color of law as a Justice of the Peace as aforesaid, wilfully and without legal cause prepare a false,

The evidence showed that the arrest and incarceration of Homer Fraley were contrived by petitioner and his wife for purposes wholly unrelated to the execution of the law. Homer Fraley was a Republican election official appointed to serve at the polls on November 6, 1962 (V. 2, p. 24). He was active in efforts to challenge the registration of persons not entitled to vote, and he was prepared to pursue these efforts on November 6 (V. 2, pp. 33–35, 40). Petitioner was the Democratic candidate for Constable

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fictitious, and fraudulent complaint and warrant of arrest charging that Homer Fraley had raped one "Mary Marcum" or "Mary Marcom," the said defendant LOUISE RAMEY well knowing that the offense charged in the complaint and warrant was false, ficititous, and fraudulent, and well knowing that Homer Fraley was innocent of that crime or any other crime against "Mary Marcum" or "Mary Marcom," or any other person;

It was further part of the wilful plan and purpose of the said conspiracy that the defendant LOUISE RAMEY would give said complaint and warrant to her husband, the defendant JAMES RAMEY, JR., a Constable of Grant District, as aforesaid, who likewise well knew that the offense charged in the complaint and warrant was false, fictitious, and fraudulent, and that Homer Fraley was innocent of that crime or any other crime against "Mary Marcum" or "Mary Marcom," or any other person; and that thereafter the said defendant, JAMES RAMEY, JR., would arrest and take into custody and would cause to be incarcerated the said Homer Fraley; the defendants, LOUISE RAMEY AND JAMES RAMEY, JR., well knowing that the arrest and incarceration of said Homer Fraley would not be justified or warranted and would be for the purpose and have the effect of preventing the said Homer Fraley from acting as a Republican official in the election of November 6, 1962, in which the defendant JAMES RAMEY, JR., was a Democratic candidate for the office of Constable of Grant District, Wayne County, West Virginia; * * *.

of Grant District, Wayne County (V. 2, p. 23). He arrested Fraley at 3:30 A.M. election morning, and Fraley remained in jail until approximately noon on election day (V. 2, pp. 24, 31). Fraley did not resist and petitioner did not use force (V. 2, p. 38). As a consequence of his arrest and incarceration, Fraley was not able to serve as an election official (V. 2, p. 32; V. 3, p. 164).

The complaint against Fraley was that he had raped one "Mary Marcum" (Gov't Exh. 1). "Mary Marcum" could not be located to appear before a Wayne County Grand Jury to substantiate her charge and was not produced to testify at petitioner's trial (V. 2, p. 45; V. 3, p. 151). Fraley was never indicted (V. 2, p. 45). The complaint and warrant used to effectuate Fraley's arrest were incorporated in a printed form, which, because of a printer's error, was unique (V. 2, pp. 78–79, 122–123, 124, 126). Although the form is dated November 2, 1962 (Gov't Exhs. 1 and 2)—indicating that "Mary Marcum" complained of rape and Louise Ramey issued the warrant for Fraley's arrest on that day—there was evidence petitioner sought "rape warrants" from a justice of the peace and requested instructions on how to complete the form three days later (V. 2, pp. 74–77; V. 3, p. 145) and that the forms then given to petitioner contained the same unique printing error—an error called to petitioner's attention—as the form used to arrest Fraley (V. 2, p. 81). Petitioner produced evidence indicating that he was away from Wayne County when the warrant for Fraley's arrest was

issued and during the days immediately preceding the November 6, 1962, election (V. 3, pp. 216–217, 231–232). The prosecution offered testimony to refute this alibi and to establish petitioner's presence in Wayne County at the time in question (V. 2, pp. 64–65, 74, 92, 111–113; V. 3, pp. 144–146, 154).

The jury returned verdicts of guilty against petitioner on both counts and against his wife Louise on the conspiracy count (V. 1, pp. 19–20). Petitioner was sentenced to one year on each count, the sentences to be served concurrently (V. 3, pp. 324–326). Imposition of sentence on Mrs. Ramey was suspended, and she was placed on probation for one year (V. 3, p. 325). Only petitioner appealed (V. 4, p. 20). On September 14, 1964, the court of appeals unanimously affirmed the conviction (V. 4, pp. 19–26).

ARGUMENT

1. Subjecting an individual, without cause, to arrest and incarceration is a federal criminal offense in violation of 18 U.S.C. 242. *Culp* v. *United States,* 131 F. 2d 93, 98 (C.A. 8); *Brown* v. *United States,* 204 F. 2d 247, 249–250 (C.A. 6); cf. *Catlette* v. *United States,* 132 F. 2d 902, 906 (C.A. 4); *Koehler* v. *United States,* 189 F. 2d 711, 713 (C.A. 5), certiorari denied, 342 U.S. 852. It is immaterial whether abuse, violence, or threats of harm are involved. As the court observed in the *Brown* case (204 F. 2d at 249), the rights protected by the Fourteenth Amendment, and hence by Section 242, "include the right * * * not to be arrested by an officer acting arbitrarily without cause and for

an ulterior purpose." Petitioner's argument to the contrary is founded on decisions to the effect that a claim of false arrest by a State officer may not be the subject of a civil action in federal court. That premise is undermined by *Monroe* v. *Pape*, 365 U.S. 167.[8] But, in any event, whatever the rule with respect to civil actions for damages under 42 U.S.C. 1983, it has been settled, at the least since *Screws* v. *United States*, 325 U.S. 91, 108, that in criminal prosecutions under Section 242 "The fact that [the act] is also a violation of state law does not make it any the less a federal offense punishable as such."

2. There is no merit in the contention that the evidence was not sufficient to support petitioner's conviction. As we have shown, at petitioner's trial the government demonstrated that the arrest and incarceration of Homer Fraley was not a routine instance of law enforcement, but an unlawful abuse of official power by State officials. Ample evidence was presented to show the fraudulent nature of the arrest warrant, to refute petitioner's alibi and to establish the motivation for petitioner's conduct. The court of

[8] Petitioner relies on *McCartney* v. *State of West Virginia*, 156 F. 2d 739 (C.A. 4); *Lyons* v. *Welmer*, 174 F. 2d 473 (C.A. 4), certiorari denied, 338 U.S. 850; *Yglesias* v. *Gulfstream Park Racing Association*, 201 F. 2d 817 (C.A. 5), certiorari denied, 345 U.S. 993; *Agnew* v. *City of Compton*, 239 F. 2d 226 (C.A. 9), certiorari denied, 353 U.S. 959; *Dunn* v. *Gazzola*, 216 F. 2d 709 (C.A. 1). These cases are based largely on the theory that the Fourteenth Amendment and 42 U.S.C. 1983 do not provide remedies that duplicate those available under State law. But the rationale of these cases has been totally undermined by *Monroe* v. *Pape*, 365 U.S. 167, 183, 187. See, also, *McNeese* v. *Board of Education*, 373 U.S. 668, 671–672.

appeals properly concluded that the record here "reflects a sufficiency of facts to present the guilt or innocence of appellant to the jury. He has had his day in court and a jury of his peers has passed on the issues of fact" (V. 4, p. 21). It is, of course, no ground for reversal that the evidence against petitioner may be characterized as circumstantial. See *Holland* v. *United States*, 348 U.S. 121; *White* v. *United States*, 279 F. 2d 740, 748 (C.A. 4), certiorari denied, 364 U.S. 850.[4]

3. Finally, petitioner contends that, as a State law enforcement officer, he is immune from prosecution. But the cases on which he relies—*Bradley* v. *Fisher*, 13 Wall. 335, and *United States* v. *Chaplin*, 54 F. Supp. 926 (S.D. Cal.)—involved a claim of immunity by judicial officers and not of a constable, as here. Whether or not judicial officers are amenable to prosecutions under 18 U.S.C. 242[5] or civil suits under 42 U.S.C. 1983, it is clear that law enforcement officers in the executive branch enjoy no such immunity. See,

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[4] Petitioner's claim that the evidence fails to establish "the corpus delicti of offenses under Section 242 and 371" (Pet. 5) is merely a restatement of his contention that violence or physical abuse is required to establish the crimes charged in this case (*supra*).

[5] Even judicial officers are probably not immune from prosecution under 18 U.S.C. 242. See *Ex parte Virginia*, 100 U.S. 339, 346; *McShane* v. *Moldovan*, 172 F. 2d 1016, 1020, 1023 (C.A. 6); *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 250–251 (C.A. 3), certiorari denied, 332 U.S. 776. The *Chaplin* case, decided before *Screws* v. *United States* and *Monroe* v. *Pape*, is clearly erroneous and was expressly disregarded in *Picking*. See, also, *Yates* v. *Village of Hoffman Estates, Illinois*, 209 F. Supp. 757 (N.D. Ill.) (police magistrate amenable to suit under 42 U.S.C. 1983).

e.g., Screws v. *United States,* 325 U.S. 91; *Monroe* v. *Pape,* 365 U.S. 167; *Egan* v. *City of Aurora,* 365 U.S. 514; *Culp* v. *United States,* 131 F. 2d 93 (C.A. 8); *Koehler* v. *United States,* 189 F. 2d 711 (C.A. 5), certiorari denied, 342 U.S. 852. Moreover, the present case does not involve an attempt to impose criminal liability on an officer performing a ministerial act consistent with his legal duties. The charge here is of a deliberate deprivation of constitutional rights, which (as petitioner emphasizes) involves a clear violation of State law. If the shield of immunity bars this prosecution, no government official can ever be prosecuted under 18 U.S.C. 242.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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